

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LORI BELL,

Plaintiff,

- against -

CAPACITY GROUP OF NY LLC,

Defendant.

USDC SDNY
DOCUMENT
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DATE FILED: 5/16/13

ORDER

12 Civ. 9092 (PGG)

PAUL G. GARDEPHE, U.S.D.J.:

Plaintiff Lori Bell filed this action on December 13, 2012, alleging that Defendant Capacity Group of NY LLC (“Capacity”) breached an oral agreement that required Capacity to pay Bell a commission for brokering an insurance contract between Capacity and a third party client, Rain CII Carbon LLC (“Rain”). (Dkt. No. 1) In an April 29, 2013 letter, Capacity seeks leave to amend its answer to assert an affirmative defense of illegality. (Dkt. No. 15) Capacity contends that Bell is not licensed in New York to broker the type of insurance that Capacity ultimately sold to Rain, and that any agreement to compensate Bell for brokering that deal is illegal under New York law and therefore unenforceable. In a May 1, 2013 letter, Bell opposes Capacity’s request for leave to amend, arguing that it would be futile because Texas rather than New York law applies, given that Rain is domiciled in Texas. (Dkt. No. 16)

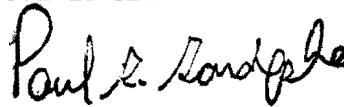
Pursuant to Federal Rule of Civil Procedure 15, a “court should freely give leave [to amend a pleading] when justice so requires.” Fed. R. Civ. P. 15(a)(2). Accordingly, leave to amend “should not be denied unless there is evidence of undue delay, bad faith, undue prejudice to the non-movant, or futility.” Milanese v. Rust-Oleum Corp., 244 F.3d 104, 110 (2d Cir. 2001) (citing Foman v. Davis, 371 U.S. 178, 182 (1962)).

The determination of whether New York or Texas law applies here is a fact-intensive inquiry not capable of resolution at this early stage of the case. Accordingly, it cannot be said that adding the proposed affirmative defense of illegality would be futile. Moreover, there is no evidence that Capacity has acted in bad faith in moving to amend now, nor is there a risk of undue delay or unfair prejudice to Bell given that a case management plan was only recently entered in this action, and discovery is scheduled to continue through July 3, 2013. (See Dkt. No. 13) Accordingly, Capacity is granted leave to amend its answer to add an affirmative defense of illegality.

It is hereby ORDERED that Capacity shall file its amended answer by **May 23, 2013**.

Dated: New York, New York
May 16, 2013

SO ORDERED.

A handwritten signature in black ink, appearing to read "Paul G. Gardephe", written over a horizontal line.

Paul G. Gardephe
United States District Judge